

1316 United States 1316
Circuit Court of Appeals
For the Ninth Circuit.

CHINA MAIL STEAMSHIP COMPANY, LIM-
ITED, a Corporation, Owner and Claimant of
the Steamship "NANKING," Her Engines,
Boilers, Machinery, Tackle, Apparel and
Furniture,

Appellant,

vs.

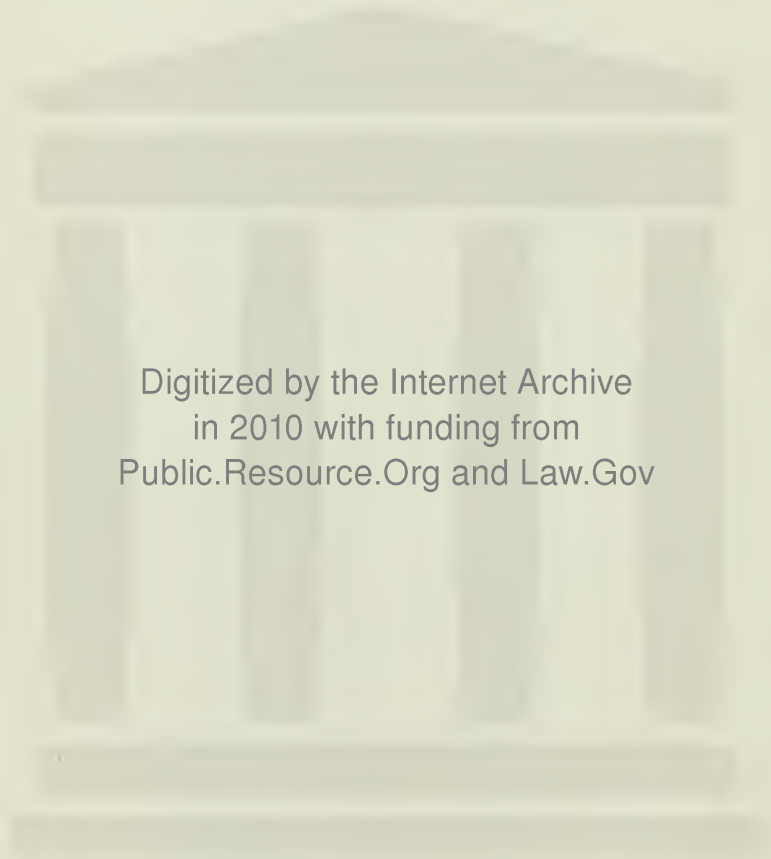
THE UNITED STATES OF AMERICA,

Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court for the
Territory of Hawaii.

FILED
MAY 29 1922
F. D. MONCKTON,
CLERK



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United States
Circuit Court of Appeals
For the Ninth Circuit.

CHINA MAIL STEAMSHIP COMPANY, LIMITED, a Corporation, Owner and Claimant of the Steamship "NANKING," Her Engines, Boilers, Machinery, Tackle, Apparel and Furniture,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

For Libellant: THE UNITED STATES OF
AMERICA,

S. C. HUBER, Esq., United States District
Attorney, Honolulu, Hawaii.

For Libellee: THE STEAMSHIP "NANKING,"
Her Engines, etc.

Messrs. SMITH, WARREN & STANLEY.

For Claimant: CHINA MAIL STEAMSHIP COM-
PANY, LIMITED.

Messrs. SMITH, WARREN & STANLEY.

[1*]

In the District Court of the United States for the
Territory of Hawaii.

No. 204.

THE UNITED STATES OF AMERICA,

Libellant,

vs.

The Steamship "NANKING," Her Engines, Boilers,
Machinery, Tackle, Apparel and Furniture,
Libellee,

CHINA MAIL STEAMSHIP COMPANY, LIM-
ITED,

Owner and Claimant.

*Page-number appearing at foot of page of original certified Apostiles
on Appeal.

Statement Under Admiralty Rule 4.

TIME OF COMMENCING SUIT:

July 2, 1921: Verified libel was filed and monition issued to the United States Marshal for the District of Hawaii.

NAMES OF ORIGINAL PARTIES:

Libellant: United States of America.

Libellee: The Steamship "Nanking," her Engines, etc.

Claimant: China Mail Steamship Co., Ltd., became party before appeal.

DATES OF FILING OF PLEADINGS:

July 2, 1921: Libel.

October 28, 1921: Answer of Claimant.

SERVICES OF PROCESS:

July 2, 1921: Monition was issued and delivered to the United States Marshal.

July 6, 1921: Discontinuance filed by United States Attorney, no return made by U. S. Marshal upon monition heretofore issued. [2]

TIME WHEN PROCEEDINGS WERE HAD:

September 16, 1921: Proceedings on motion to set aside discontinuance.

Septemebrr 21, 1921: Proceedings at decision on motion to set aside discontinuance.

October 26, 1921: Opinion on motion to set aside discontinuance.

November 17, 1921: Opinion on exceptions to answer to libel.

November 17, 1921: Final decree filed and entered.

November 26, 1921: Notice of appeal.

December 5, 1921: Bond on appeal.

Proceedings had before The Honorable HORACE W. VAUGHAN, District Judge.

Certificate of Clerk U. S. District Court to Statement Under Admiralty Rule 4.

United States of America,
Territory of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled suit; the names of the original parties thereto and those who have become parties before the appeal, the several dates when the respective pleadings were filed; an account of the service of process herein, the time when proceedings were had and the name of the Judge presiding; the date of the filing and entering of the final decree and the date when the notice of appeal was filed in the case of The United States of America, Libellant, vs. The Steamship "Nanking," Her Engines, etc., Libellee, and China Mail Steamship Co., Ltd., Owner and Claimant, Admiralty Number 204, in the United States District Court of the Territory of Hawaii. [3]

In Witness Whereof, I have hereunto set my hand

4 *China Mail Steamship Company, Limited,*

and affixed the seal of said District Court, this 5th day of April, A. D. 1922.

[Seal]

WM. L. ROSA,
Clerk, United States District Court, Territory of
Hawaii. [4]

In the United States District Court of the Territory of Hawaii. The United States of America, Libellant, vs. The Steamship "Nanking," Her Engines, Boilers, Machinery, Tackle, Apparel, and Furniture, Libellee. Libel in Rem Against the Steamship "Nanking." Filed Jul. 2, 1921, at two o'clock and — minutes, — M. (S.) Wm. L. Rosa, Clerk. By ———, Deputy Clerk. S. C. Huber, United States Attorney. N. D. Godbold, Assistant United States Attorney. [5]

In the United States District Court for the Territory of Hawaii.

THE UNITED STATES OF AMERICA,

Libellant,

vs.

The Steamship "NANKING," Her Engines, Boilers,
Machinery, Tackle, Apparel and Furniture,
Libellee.

Libel in Rem Against the Steamship "Nanking."

To the Honorable HORACE W. VAUGHAN and
the Honorable JOSEPH B. POINDEXTER,
Judges of the United States District Court:

The libel of information by S. C. Huber, United

States Attorney for the District of Hawaii, who prosecutes for the said United States in this behalf, and being present here in court in his own proper person, in the name and on behalf of the said United States against the steamship "Nanking," her engines, boilers, machinery, apparel and furniture, in a cause of seizure alleges and informs as follows:

FIRST COUNT.

1. That by an Act of Congress of the United States of America, approved February 5, 1917, entitled "An Act to Regulate the Immigration of Aliens to, and the Residence of Aliens in, the United States," it was, among other things, provided as follows:

"Sec. 10. That it shall be the duty of every person, including owners, officers, and agents of vessels or transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section twenty-three of this Act, bringing an alien to, or providing a means for an alien to come to, any seaport or land border port of the United States, to prevent the landing of such alien in the United States at any time or place other [6] than as designated by the immigration officers, and the failure of any such person, owner, officer, or agent to comply with the foregoing requirements shall be deemed a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than \$200 nor more than \$1000, or by imprisonment for a term not exceeding one year, or by

both such fine and imprisonment; or, if in the opinion of the Secretary of Labor it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, a penalty of \$1000 shall be a lien upon the vessel whose owner, master, officer or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States Court."

2. That after the passage of said Act, to wit, during the months of January and February, A. D. 1921, the said "Nanking" was a common carrier of passengers operating by steam power between the ports of Hongkong, China, and San Francisco, California; that on the 1st day of February, 1921, there was being carried and transported from Hongkong, China, to Mazatlan, Mexico, via San Francisco, California, as a passenger, on the said "Nanking," one Jesus Wong, who was an alien, the said Jesus Wong being then and there a subject of the Republic of China.

3. That from about 4:10 o'clock P. M. of the 1st day of February, 1921, to about 2 o'clock A. M. of the 2d day of February, 1921, the said steamship "Nanking" was docked at the port of Honolulu, District of Hawaii, and the said Jesus Wong was then and there a passenger on the said "Nanking" having theretofore taken passage on said "Nanking" at the port of Hongkong, in the Republic of China; that the owners, officers and agents of the said "Nanking" were then and there charged with the

duty to prevent the landing of the said Jesus Wong at the port of Honolulu aforesaid.

4. That while said "Nanking" was in the port of Honolulu aforesaid, at the time aforesaid, the said Jesus Wong did land in the United States at the port of Honolulu aforesaid, and the owners, officers and agents of the said "Nanking" did not prevent the said [7] Jesus Wong from then and there landing in the United States and did unlawfully permit the said Jesus Wong to land at said Honolulu aforesaid, at the time aforesaid.

5. That at the time said Jesus Wong landed at Honolulu as aforesaid said port of Honolulu had not been designated by any immigration officer of the United States where the said Jesus Wong might land at the time said "Nanking" was docked at said port of Honolulu on said 1st and 2d days of February, 1921, as aforesaid, and authority had not been given to the said Jesus Wong nor to any of the owners, officers or agents of the said "Nanking" to permit the said Jesus Wong to then and there land at said Honolulu aforesaid.

6. That in the opinion of the Secretary of Labor of the United States it is impracticable and inconvenient to criminally prosecute the person, owner, master, officer or agent of said steamship "Nanking" for the unlawful landing of the said Jesus Wong in the United States as aforesaid.

7. That the said "Nanking," her engines, boilers, machinery, tackle, apparel and furniture, then and there, by virtue of the premises and the said Act of Congress above referred to, became and is now

subject to the penalty of one thousand dollars (\$1000) provided by the said Act of Congress.

8. That all and singular the premises aforesaid are true and within the admiralty and marine jurisdiction of the United States and of this Honorable Court. [8]

For another and different cause of seizure against said steamship "Nanking" said S. C. Huber, United States District Attorney, alleges and informs as follows:

SECOND COUNT.

1. That by an Act of Congress of the United States of America, approved February 5, 1917, entitled, "An Act to Regulate the Immigration of Aliens to, and the Residence of Aliens in, the United States," it was, among other things, provided as follows:

"Sec. 10. That it shall be the duty of every person, including owners, officers, and agents of vessels or transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section twenty-three of this Act, bringing an alien to, or providing a means for an alien to come to, any seaport or land border port of the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers, and the failure of any such person, owner, officer, or agent to comply with the foregoing requirements shall be deemed a misdemeanor and

on conviction thereof shall be punished by a fine in each case of not less than \$200 nor more than \$1000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, a penalty of \$1000 shall be a lien upon the vessel whose owner, master, officer or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States Court."

2. That, after the passage of said Act, to wit, during the months of January and February, A. D. 1921, the said "Nanking" was a common carrier of passengers operating by steam power between the ports of Hongkong, China, and San Francisco, California; that on the 1st day of February, 1921, there was being carried and transported from Hongkong, China, to Mazatlan, Mexico, via San Francisco, California, as passenger, on the said "Nanking," one Manuel Chan, who was an alien, the said Manuel Chan being then and there a subject of the Republic of China. [9]

3. That from about 4:10 o'clock P. M. of the 1st day of February, 1921, to about 2 o'clock A. M. of the 2d day of February, 1921, the said steamship "Nanking" was docked at the port of Honolulu, District of Hawaii, and the said Manuel Chan was then and there a passenger on the said "Nanking" having theretofore taken passage on said "Nanking" at

the port of Hongkong, in the Republic of China; that the owners, officers and agents of the said "Nanking" were then and there charged with the duty to prevent the landing of the said Manuel Chan at the port of Honolulu aforesaid.

4. That while said "Nanking" was in the port of Honolulu aforesaid, at the time aforesaid, the said Manuel Chan did land in the United States at the port of Honolulu aforesaid, and the owners, officers and agents of the said "Nanking" did not prevent the said Manuel Chan from then and there landing in the United States and did unlawfully permit the said Manuel Chan to land at said Honolulu aforesaid, at the time aforesaid.

5. That at the time said Manuel Chan landed at Honolulu as aforesaid said port of Honolulu had not been designated by any immigration officer of the United States as a place in the United States where the said Manuel Chan might land at the time said "Nanking" was docked at said port of Honolulu on said 1st and 2d days of February, 1921, as aforesaid, and authority had not been given to the said Manuel Chan nor to any of the owners, officers or agents of the said "Nanking" to permit the said Manuel Chan to then and there land at said Honolulu aforesaid.

6. That in the opinion of the Secretary of Labor of the United States it is impracticable and inconvenient to criminally prosecute the person, owner, master, officer or agent of said steamship "Nanking" for the unlawful landing of the said Manuel Chan in the United States as aforesaid. [10]

7. That the said "Nanking," her engines,

boilers, machinery, tackle, apparel and furniture, then and there, by virtue of the premises and the said Act of Congress above referred to, became and is now subject to the penalty of one thousand dollars (\$1000) provided by the said Act of Congress.

8. That all and singular the premises aforesaid are true and within the admiralty and marine jurisdiction of the United States and of this Honorable Court. [11]

For another and different cause of action against said steamship "Nanking" said S. C. Huber, United States Attorney, alleges and informs as follows:

THIRD COUNT.

1. That by an Act of Congress of the United States of America, approved February 5, 1917, entitled, "An Act to Regulate the Immigration of Aliens to, and the Residence of Aliens in, the United States," it was, among other things, provided as follows:

"Sec. 10. That it shall be the duty of every person, including owners, officers, and agents of vessels or transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section twenty-three of this Act, bringing an alien to, or providing a means for an alien to come to, any seaport or land border port of the United States, to prevent the landing of such alien in the United States at any time or place other than as designated by the immigration officers, and the failure of any such person, owner, officer, or agent to comply with the fore-

going requirements shall be deemed a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than \$200 nor more than \$1000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, a penalty of \$1000 shall be a lien upon the vessel whose owner, master, officer or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States Court."

2. That, after the passage of said Act, to wit, during the months of January and February A. D. 1921, the said "Nanking" was a common carrier of passengers operating by steam power between the ports of Hongkong, China, and San Francisco, California; that on the 1st day of February, 1921, there was being carried and transported from Hongkong, China, to Mazatlan, Mexico, via San Francisco, California, as a passenger, on the said "Nanking," one Ramon Chon, who was an alien, the said Ramon Chon being then and there a subject of the Republic of China. [12]

3. That from about 4:10 o'clock P. M. of the 1st day of February, 1921, to about 2 o'clock A. M. of the 2d day of February, 1921, the said steamship "Nanking" was docked at the port of Honolulu, District of Hawaii, and the said Ramon Chon was then and there a passenger on the said "Nanking"

having theretofore taken passage on said "Nanking" at the port of Hongkong, in the Republic of China; that the owners, officers and agents of the said "Nanking" were then and there charged with the duty to prevent the landing of the said Ramon Chon at the port of Honolulu aforesaid.

4. That while said "Nanking" was in the port of Honolulu aforesaid, at the time aforesaid, the said Ramon Chon did land in the United States at the port of Honolulu aforesaid, and the owners, officers and agents of the said "Nanking" did not prevent the said Ramon Chon from then and there landing in the United States and did unlawfully permit the said Ramo Chon to land at said Honolulu aforesaid, at the time aforesaid.

5. That at the time said Ramon Chon landed at Honolulu as aforesaid, said port of Honolulu had not been designated by any immigration officer of the United States as a place in the United States where the said Ramon Chon might land at the time said "Nanking" was docked at said port of Honolulu on said 1st and 2d days of February, 1921, as aforesaid, and authority had not been given to the said Ramon Chon nor to any of the owners, officers or agents of the said "Nanking" to permit the said Ramon Chon to then and there land at said Honolulu aforesaid.

6. That in the opinion of the Secretary of Labor of the United States it is impracticable and inconvenient to criminally prosecute the person, owner, master, officer or agent of said steamship "Nan-

king” for the unlawful landing of the said Ramon Chon in the United States as aforesaid. [13]

7. That the said “Nanking,” her engines, boilers, machinery, tackle, apparel and furniture, then and there, by virtue of the premises and the said Act of Congress above referred to, became and is now subject to the penalty of one thousand dollars (\$1000) provided by the said Act of Congress.

8. That all and singular the premises aforesaid are true and within the admiralty and marine jurisdiction of the United States and of this Honorable Court. [14]

For another and different cause of seizure against said steamship “Nanking” said S. C. Huber, United States Attorney, alleges and informs as follows:

FOURTH COUNT.

1. That by an Act of Congress of the United States of America, approved February 5, 1917, entitled, “An Act to Regulate the Immigration of Aliens to, and the Residence of Aliens in, the United States,” it was, among other things, provided as follows:

“Sec. 10. That it shall be the duty of every person, including owners, officers, and agents of vessels or transportation lines, or international bridges or toll roads, other than railway lines which may enter into a contract as provided in section twenty-three of this Act, bringing an alien to, or providing a means for an alien to come to, any seaport or land border port of the United States, to prevent the landing of

such alien in the United States at any time or place other than as designated by the immigration officers, and the failure of any such person, owner, officer, or agent to comply with the foregoing requirements shall be deemed a misdemeanor and on conviction thereof shall be punished by a fine in each case of not less than \$200 nor more than \$1000, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; or, if in the opinion of the Secretary of Labor it is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of any such vessel, a penalty of \$1000 shall be a lien upon the vessel whose owner, master, officer or agent violates the provisions of this section, and such vessel shall be libeled therefor in the appropriate United States Court."

2. That, after the passage of said Act, to wit, during the months of January and February, A. D. 1921, the said "Nanking" was a common carrier of passengers operating by steam power between the ports of Hongkong, China, and San Francisco, California; that on the 1st day of February, 1921, there was being carried and transported from Hongkong, China, to Mazatlan, Mexico, via San Francisco, California, as a passenger, on the said "Nanking," one Joaquin Lam, who was an alien, the said Joaquin Lam being then and there a subject of the Republic of China. [15]

3. That from about 4:10 o'clock P. M. of the 1st day of February, 1921, to about 2 o'clock A. M.

of the 2d day of February, 1921, the said steamship "Nanking" was docked at the port of Honolulu, District of Hawaii, and the said Joaquin Lam was then and there a passenger on the said "Nanking," having theretofore taken passage on said "Nanking" at the port of Hongkong, in the Republic of China; that the owners, officers and agents of the said "Nanking" were then and there charged with the duty to prevent the landing of the said Joaquin Lam at the port of Honolulu aforesaid.

4. That while said "Nanking" was in the port of Honolulu aforesaid, at the time aforesaid, the said Joaquin Lam did land in the United States at the port of Honolulu aforesaid, and the owners, officers and agents of the said "Nanking" did not prevent the said Joaquin Lam from then and there landing in the United States and did unlawfully permit the said Joaquin Lam to land at said Honolulu aforesaid, at the time aforesaid.

5. That at the time said Joaquin Lam landed at Honolulu as aforesaid, said port of Honolulu had not been designated by any immigration officer of the United States as a place in the United States where the said Joaquin Lam might land at the time said "Nanking" was docked at said port of Honolulu on said 1st and 2d days of February, 1921, as aforesaid, and authority had not been given to the said Joaquin Lam nor to any of the owners, officers or agents of the said "Nanking" to permit the said Joaquin Lam to then and there land at said Honolulu aforesaid.

6. That in the opinion of the Secretary of

Labor of the United States it is impracticable and inconvenient to criminally prosecute the person, owner, master, officer or agent of said steamship "Nanking" for the unlawful landing of the said Joaquin Lam in the United States as aforesaid. [16]

7. That the said "Nanking," her engines, boilers, machinery, tackle, apparel and furniture, then and there, by virtue of the premises and the said Act of Congress above referred to, became and is now subject to the penalty of one thousand dollars (\$1000) provided by the said Act of Congress.

8. That all and singular the premises aforesaid are true and within the admiralty and marine jurisdiction of the United States and of this Honorable Court.

WHEREFORE; the said S. C. Huber, United States Attorney for the District of Hawaii, on behalf of the said United States, prays the usual process and monition against the said steamship "Nanking," her engines, boilers, machinery, tackle, apparel and furniture, in this behalf to be made, and that all persons interested in said "Nanking," her engines, boilers, machinery, tackle, apparel and furniture, may be cited to appear and answer the premises, and that this Honorable Court may be pleased to decree for the penalties aforesaid and that the said "Nanking" may be condemned and sold to pay the several penalties aforesaid, with costs, and for such other and further relief as shall to law and justice appertain.

(Sgd.) S. G. HUBER,
United States Attorney. [17]

The United States of America,
Territory of Hawaii,—ss.

S. C. Huber, being first duly sworn according to law, deposes and says:

That he is the United States District Attorney in and for the Territory and District of Hawaii; that he has read the foregoing petition and knows the contents thereof and that the facts therein stated he believes to be true.

(Sgd.) S. C. HUBER.

Subscribed and sworn to before me this 2d day of July, A. D. 1921.

(Sgd.) WM. L. ROSA,
Clerk United States District Court, Territory of Hawaii.

Order Directing Issuance of Process.

Now, to wit, on this 2d day of July, 1921, libel herein having been presented and the Court being duly advised in the premises, hereby orders and directs that process issue as prayed in said libel.

(Sgd.) HORACE W. VAUGHAN,
Judge United States District Court, Territory of Hawaii. [18]

In the District Court of the United States for the Territory of Hawaii. In Admiralty—In Rem. The United States of America, Libellant, vs. The Steamship “Nanking,” Her Engines, Boilers, Machinery, Tackle, Apparel and Furniture, Libellant.

Answer of Claimant. Filed October 28, 1921.
(Sgd.) Wm. L. Rosa, Clerk. Smith, Warren &
Stanley, Proctors for Claimant.

Received a copy of the within answer this 28th
day of October, 1921.

(Sgd.) S. C. HUBER,
United States District Attorney. [19]

In the District Court of the United States for the
Territory of Hawaii.

IN ADMIRALTY—IN REM.

ADM.—No. 204.

THE UNITED STATES OF AMERICA,
Libellant,
vs.

The Steamship "NANKING," Her Engines, Boil-
ers, Machinery, Tackle, Apparel and Furni-
ture,

Libellee.

Answer of Complaint.

To the Honorable HORACE W. VAUGHAN, Judge
of the United States District Court for the
Territory of Hawaii:

Now comes the China Mail Steamship Company,
Limited, a corporation, the owner and claimant
herein of the above-named steamship "Nanking,"
her engines, boilers, machinery, tackle, apparel and
furniture, libellee in the above-entitled cause, and
by leave of Court obtained, makes this its answer
unto the libel on file herein, and to the four several
counts thereof as follows:

I.

Claimant admits the matter alleged in paragraphs 1 and 2 of each of the four several counts of said libel.

II.

Answering the allegations made in paragraph 3 of each of [20] the said several counts of said libel, claimant admits that from about 4:10 o'clock P. M. of the 1st day of February, 1921, to about 2 o'clock A. M. of the 2d day of February, 1921, the said steamship "Nanking" was docked at the port of Honolulu, District of Hawaii, and that the four alien passengers in said several counts separately named, to wit, Jesus Wong, Manuel Chan, Ramon Chon and Joaquin Lam, were then and there passengers on the said "Nanking," each having theretofore taken passage on said "Nanking" at the port of Hongkong, in the Republic of China; but claimant denies the conclusion of law in each of said paragraphs 3 further made, inferred and alleged that the owners, officers and agents of the said "Nanking" were then and there charged with the duty to prevent the landing of the said four alien passengers (and each of them) at the port of Honolulu aforesaid; although claimant admits that the owners, officers and agents of the said "Nanking" were then and there required to exercise all due and reasonable care and diligence and do all that reasonably lay within their power to prevent the landing of said passengers at said port of Honolulu.

III.

Answering the allegations made in paragraph 4 of each of said several counts of said libel, claimant admits that while said "Nanking" was in the port of Honolulu aforesaid, at the time aforesaid, the said Jesus Wong, Manuel Chan, Ramon Chon and Joaquin Lam did land in the United States at the port of Honolulu aforesaid, and the owners, officers and agents of the said "Nanking" did not in fact prevent them or any of them from then and there landing in the United States; but claimant denies the conclusion of law in each of said paragraphs further made and alleged that [21] the owners, officers and agents of the said "Nanking" (or any of them) did unlawfully permit said passengers to land at said port of Honolulu at the time aforesaid.

IV.

Claimant admits the matter separately alleged in paragraph 5 in each of said several counts of said libel.

V.

Claimant leaves libellant to its proof of the matters alleged in paragraph 6 of each of said several counts of said libel.

VI.

Answering paragraph 7 in each of said several counts of said libel, claimant denies that the said "Nanking," her engines, boilers, machinery, tackle, apparel and furniture, then and there, by virtue of the premises and the said Act of Congress therein referred to, became and is now sub-

ject to the penalty of one thousand dollars (\$1000) in each of said cases provided by said Act of Congress.

VII.

And said claimant, further answering all and singular the matters alleged in said libel and in each of the said several counts thereof, says that it has a good and meritorious defense to the several claims set forth in said libel, to wit:

That the said four alien passengers escaped from the said vessel against the will and intent of the owner, officers and agents of the vessel, and that neither the master or any other officer or agent of said vessel nor the owner thereof either knowingly or negligently permitted the landing of said alien Chinese from said vessel, and that every reasonable and proper precaution was taken and exercised by the master and other [22] officers and the owner of said vessel to prevent any passengers on said vessel from leaving said vessel, and none in fact did leave or escape from said vessel except over the regular gangway to the dock, which gangway was well guarded by the master and agents of said vessel to prevent any and all aliens from leaving said vessel without exhibiting proper passes issued by the Inspector of Immigration at Honolulu, and that no alien or Chinese passengers did in fact leave said vessel over said gangway without exhibiting such pass; and claimant is informed and believes and therefore alleges and proposes to prove in this cause, that the said escapes were effected by the fraudulent use of passes theretofore regularly and

properly issued by the United States Inspector of Immigration at said Honolulu, and approved by Castle & Cooke, Limited, (the then agents for said steamship company), to Chinese residents of Honolulu having lawful business on the vessels of said steamship company, which fraudulent use consisted in one or more of said passes (either with or without the connivance of the legitimate holders thereof therein named) having been given to one or more persons holding his or their own proper pass or passes, who took such other passes on board the vessel and there gave such other passes to the several Chinese who escaped, thereby enabling said escaping Chinese to use said passes as though their own, by falsely impersonating the person named in such pass, with the aid of wearing some article or articles of wearing apparel theretofore surreptitiously furnished to them by conniving friends or agents and bearing some mark denoting the origin or purchase thereof in Honolulu, thereby passing the Immigration Inspectors and guards and the guards furnished by said vessel at the gangway of the vessel as Honolulu residents and in a manner beyond the power [23] of said steamship company to have anticipated and prevented; and also, as claimant is informed and believes, and proposes to prove in this cause, passes or permits were occasionally made out by the Inspector of Immigration at Honolulu for more than one person for Chinese of Honolulu desiring to visit on board vessels in port and it would therefore be possible and easily practicable for such passes to be used by one or more persons less

than the whole number of persons mentioned therein in boarding any vessel and then used to pass from the ship by the full number of persons therein mentioned; and that on February 1, 1921, while said steamship "Nanking" was in port at Honolulu, Chinese visiting them from Honolulu did board said vessel, over the regular gangway with passes issued by said Immigration Inspector, and, while claimant cannot allege or prove with certainty that any such double passes were in fact then used, claimant nevertheless alleges that the existence of such a situation would render possible the illegal landing of alien passengers, notwithstanding all efforts of the steamship company to prevent the same.

VIII.

That in so far as section 10 of Chapter 29 of the Act of February 5, 1917, relating to Immigration assumes or may be construed to make punishable as an offense any failure of the owners, officers or agents of any vessel to prevent the landing of an alien in the United States at any time or place other than as designated by the Immigration officers, notwithstanding the exercise by them of all due and reasonable care and efforts to prevent such landing, notwithstanding circumstances beyond the reasonable power of the owner, officers, master or agents of the vessel to foresee and prevent, and without any negligence or any [24] knowledge thereof, the same is unreasonable, harsh and oppressive, and is illegal and unconstitutional.

WHEREFORE, claimant prays that said libel be dismissed, and that the bond herein given by and on

behalf of the claimant to answer whatever decree shall be made and entered in this cause against said vessel be discharged.

Dated, Honolulu, Hawaii, October 28th, 1921.

CHINA MAIL STEAMSHIP COMPANY,
LIMITED,

By FRED L. WALDRON, LIMITED,

Its Honolulu Agent,

By (Sgd.) FRED L. WALDRON,

President.

SMITH, WARREN & STANLEY,

Proctors for Claimant.

United States of America,

Territory of Hawaii,

City and County of Honolulu,—ss.

L. J. Warren, being first duly sworn, deposes and says: That he is a member of the law firm of Smith, Warren & Stanley, proctors for the China Mail Steamship Company, Limited (a corporation), the claimant in the foregoing entitled cause; that said claimant has no officer or personal agent within the Territory of Hawaii, for which reason this verification is made by affidavit on its behalf; and affiant by reason of having personally investigated the matters and things involved in the issues in this cause and interviewed witnesses with regard thereto, now says that he has prepared the foregoing answer of said claimant to the libel in said cause and knows the contents thereof and that the facts therein stated he believes to be true.

(Sgd.) L. J. WARREN.

Subscribed and sworn to before me this 28th day of October, 1921.

[Seal] (Sgd.) ANNA EDMONDS,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [25]

In the United States District Court, in and for the Territory of Hawaii. The United States of America, Libellant, vs. The Steamship "Nanking," etc., Libellee. Exceptions to Answer to Libel. Filed Nov. 8, '21. (Sgd.) Wm. L. Rosa, Clerk. S. C. Huber, United States Attorney.

Due and legal service of the within exceptions to answer to libel is hereby accepted and receipt of a copy thereof acknowledged this 8th day of November, 1921.

(Sgd.) SMITH, WARREN & STANLEY,
Proctors for Libellee. [26]

In the United States District Court, in and for the
Territory of Hawaii.

THE UNITED STATES OF AMERICA,
Libellant,

vs.

The Steamship "NANKING," etc.,
Libellee.

Exceptions to Answer to Libel.

To the Honorable HORACE W. VAUGHAN and
the Honorable JOSEPH B. POINDEXTER,
Judges of the United States District Court for
Hawaii:

The above-named libellant hereby excepts to the answer filed in the above-entitled cause by the owner and claimant, China Mail Steamship Company, Limited, for that said answer is insufficient and contemptuous and does not constitute any defense to said libel for the following reasons:

1. That said answer does not deny any material allegation of said libel.

2. That said answer, in Articles I, II, III and IV, thereof, admits all of the material allegations of said libel and of each and every count thereof.

3. That the allegations of Article VII of said answer that "claimant is informed and believes and therefore alleges and proposes to prove in this cause, that the said escapes were effected by the fraudulent use of passes theretofore regularly and properly issued by the United States Inspector of Immigration at said Honolulu, and approved by Castle & Cooke, [27] Limited (the then agents for said Steamship Company), to Chinese residents of Honolulu having lawful business on the vessels of said Steamship Company" and that "none, in fact, did leave or escape from said vessel except over the regular gangway to the dock, which gangway was well guarded by the master and agents of said vessel," are irrelevant and contemptuous,

and that neither said facts quoted above, nor any facts alleged in said Article VII. are relevant, nor do said facts, or any of them, constitute a defense to said libel.

4. That the allegations of Article VIII of said answer are wholly insufficient and state no facts upon which to base and sustain the claim that Section 10, Chapter 29, of the Act of February 5, 1917, is illegal and unconstitutional, and that the allegations of said Article VIII state only the conclusion of the pleader.

WHEREFORE, libellant asks for judgment as prayed in his libel and in each and every count thereof.

(Sgd.) S. C. HUBER,
United States Attorney,
Proctor for Libellant. [28]

In the United States District Court for the Territory of Hawaii. In Admiralty. In Rem. The United States of America, Libellant, vs. The Steamship "Nanking," etc., Libellee. Decision on Exceptions to Answer. Filed Nov. 16, 1921, at — o'clock and — minutes — M. (S.) Wm. L. Rosa, Clerk. By ———, Clerk. S. C. Huber, United States Attorney, for the Libellant. Smith, Warren & Stanley, Proctors for Libellee. Horace W. Vaughan, Judge. [29]

In the United States District Court for the Territory of Hawaii.

IN ADMIRALTY—IN REM.

THE UNITED STATES OF AMERICA,

Libellant,

vs.

The Steamship "NANKING," etc.,

Libellee.

Decision on Exceptions to Answer.

On July 2, 1921, the United States Attorney filed in this court libel in rem against the steamship "Nanking," seeking to recover four penalties of \$1000 each provided by Section 10 of the Act of February 5, 1917, chapter 29, Immigration Act.

The libel contains four separate counts, and in each count the owner, master, officers and agents of said vessel are charged with a separate violation of the act referred to, on the 1st of February, 1921, in having failed to prevent the person therein named, alleged to have been then and there an alien passenger on said vessel, from landing in the United States at said time and place, and thereby permitting him unlawfully to land in the United States at said time and place.

The claimant's answer admits the jurisdictional facts stated in paragraphs 1 and 2 of each count of the libel, including the fact of the presence on board of the aliens therein named, as passengers bound from Hongkong, China, to Mazatlan,

Mexico, and that these aliens did in fact leave the "Nanking" at the port of Honolulu, without any lawful authority having been given for them so to land, and claimant further admits that the owners, officers and agents of the vessel "did not [30] in fact prevent" said aliens from landing in the United States, but denies that they or any of them did "unlawfully permit" said passengers to land, and further denies that it was their duty, absolutely, "to prevent" the landing of said passengers; and the claimant, further answering the counts of the libel, collectively, says that it has a good and meritorious defense to the several claims of the libel, as follows:

"That the said four alien passengers escaped from the said vessel against the will and intent of the owner, officers and agents of said vessel, and that neither the master or any other officer or agent of said vessel nor the owner thereof either knowingly or negligently permitted the landing of said alien Chinese from said vessel, and that every reasonable and proper precaution was taken and exercised by the master and other officers and the owner of said vessel to prevent any passengers on said vessel from leaving said vessel, and none in fact did leave or escape from said vessel except over the regular gangway to the dock, which gangway was well guarded by the master and agents of said vessel to prevent any and all aliens from leaving said vessel without exhibiting proper passes issued by the In-

spector of Immigration at Honolulu, and that no alien or Chinese passenger did in fact leave said vessel over said gangway without exhibiting such pass; and claimant is informed and believes and therefore alleges and proposes to prove in this cause, that the said escapes were effected by the fraudulent use of passes theretofore regularly and properly issued by the United States Inspector of Immigration at said Honolulu, and approved by Castle & Cooke, Limited, (the then agents for said Steamship Company) to Chinese residents of Honolulu having lawful business on the vessels of said Steamship Company, which fraudulent use consisted in one or more of said passes (either with or without the connivance of the legitimate holders thereof therein named) having been given to one or more persons holding his or their own proper pass or passes, who took such other passes on board the vessel and there gave such other passes to the several Chinese who escaped, thereby enabling said escaping Chinese to use said passes as though their own, by falsely impersonating the person named in such pass, with the aid of wearing some article or articles of wearing apparel theretofore surreptitiously furnished to them by conniving friends or agents and bearing some mark denoting the origin or purchase thereof in Honolulu, thereby passing the Immigration Inspectors and guards and the guards furnished by said vessel at the gang-

way of the vessel as Honolulu residents and in a manner beyond the power of said Steamship Company to have anticipated and prevented; *and also*, as claimant is informed and believes, and proposes to prove in this cause, passes or permits were occasionally made out by the Inspector of Immigration at Honolulu for more than one person, for Chinese of Honolulu desiring to visit on board vessels in port, and it would therefore be possible and easily practicable for such passes to be used by one or more persons less than [31] the whole number of persons mentioned therein in boarding any vessel and then used to pass from the ship by the full number of persons therein mentioned; and that on February 1, 1921, while said Steamship 'Nanking' was in port at Honolulu, Chinese visiting them from Honolulu did board said vessel, over the regular gangway, with passes issued by said Immigration Inspector, and, while claimant cannot allege or prove with certainty that any such double passes were in fact then used, claimant nevertheless alleges that the existence of such a situation would render possible the illegal landing of alien passengers, notwithstanding all efforts of the Steamship Company to prevent the same."

As a separately stated defense, the claimant sets up the alleged unconstitutionality of Section 10 of the act referred to, in the following language:

“That in so far as Section 10 of Chapter 29 of the Act of February 5, 1917, relating to Immigration assumes or may be construed to make punishable as an offense any failure of the owners, officers or agents of any vessel to prevent the landing of an alien in the United States at any time or place other than as designated by the immigration officers, notwithstanding the exercise by them of all due and reasonable care and effort to prevent such landing, notwithstanding circumstances beyond the reasonable power of the owner, officers, master or agents of the vessel to foresee and prevent, and without any negligence or any knowledge thereof, the same is unreasonable, harsh, and oppressive, and is illegal and unconstitutional.”

The Court holds that the Act in question is constitutional.

The Court further holds that the answer fails to disclose a meritorious defense. For the reasons set forth in the opinion of the Court in *United States vs. The Steamship “Makura,”* March 1, 1920, the Court is of the opinion that “vessels bringing aliens to seaports and failing to prevent their landing at places other than those designated by the immigration officials, are subject to the penalty denounced by the section of the act referred to; that the duty to prevent such aliens from landing at any place other than that designated by the immigration officials is made absolute by the statute, and that the various changes made in the statute on the subject

indicate that Congress intended to make such duty absolute.” [32]

The exceptions are therefore sustained, and, unless the claimant shall amend its answer within ten days from the date hereof, a decree may be entered for the libellant according to the prayer of the libel.

(Sgd.) HORACE W. VAUGHAN,
Judge U. S. District Court, Territory of Hawaii.

Dated at Honolulu, T. H., this 16th day of November, 1921. [33]

In the United States District Court, in and for the Territory of Hawaii. The United States of America, Libellant, vs. The Steamboat “Nanking,” etc., Libellee. No. 204. Decree. Entered in Judgment Book, Folio No. 2793a. Filed Nov. 17, 1921. (S.) Ritchie G. Rosa, Deputy Clerk. S. C. Huber, United States Attorney. [34]

In the United States District Court, in and for the
Territory of Hawaii.

THE UNITED STATES OF AMERICA,
Libellant,

vs.

The Steamship “NANKING,” etc.,
Libellee.

Decree.

This cause having come on regularly before the Honorable Horace W. Vaughan, a Judge of this court, upon the pleadings filed by the respective

parties, and the Court, having sustained libellant's exceptions to claimant's answer, as shown by decision rendered and filed on the 16th day of November, A. D. 1921, and claimant having, in open court, elected not to amend its answer or plead further but to stand on its answer as filed, the Court therefore finds that the steamboat "Nanking," her engines, boilers, machinery, tackle, apparel and furniture, are liable to a penalty in the sum of four thousand dollars (\$4000) to be paid to the United States of America, libellant:

NOW, THEREFORE, upon motion of S. C. Huber, United States Attorney, proctor for said libellant, it is hereby ordered, adjudged and decreed that the libellant, United States of America, do have and recover from said libellee, the steamboat "Nanking," her engines, boilers, machinery, tackle, apparel and furniture, and that said respondents pay to said libellant accordingly the sum of four thousand dollars (\$4000), in lawful money of the United States, with interest thereon from the date thereof until [35] paid at the rate of six (6) per cent per annum, together with all the costs of this action, which are hereby taxed in the sum of \$8.25.

And it further appearing to the Court that the said steamboat "Nanking," her engines, boilers, machinery, tackle, apparel and furniture, have been released to the China Mail Steamship Company, Limited, owner and claimant in this cause, upon a bond for value in the sum of eight thousand dollars (\$8,000), dated the 28th day of October, A. D.

1921, signed by Fred L. Waldron, Limited, agents for said China Mail Steamship Company, Limited, on behalf of the owners of said steamboat "Nanking," with Fred L. Waldron and L. Tenney Pect as sureties, conditioned that said principal and sureties shall abide by and perform the decree of this court; and on the 17th day of Aug., 1921, said owner and claimant filed stipulation for costs in the sum of \$500 with the United States Fidelity & Guaranty Company as surety.

It is hereby FURTHER ORDERED, ADJUDGED AND DECREED that unless said decree (including costs) shall be satisfied, or proceedings thereon stayed by appeal, within ten (10) days after notice given by the proctor for said libellant to Smith, Warren & Stanley, proctors for said respondent and said claimant, of the entry of this decree and the taxation of costs herein, the said sureties, Fred L. Waldron, L. Tenney Peck and United States Fidelity & Guaranty Company, pay to said libellant the said sum of four thousand dollars (\$4,000) hereinabove awarded as aforesaid, with interest thereon to the date of payment, and the libellant's costs taxed as aforesaid, or show cause within five (5) days after the expiration of said period of ten (10) days why execution should not issue against them, their lands goods and chattels, [36] according to said bond and stipulation, to satisfy this decree. In the event of proceedings hereunder being stayed by appeal, the obligation of said sureties under said bond and stipulation shall be suspended, to satisfy such decree as shall or may

be finally made herein upon mandate on appeal; and upon payment of said sum of four thousand dollars (\$4,000) and costs (or as may be directed by any final decree upon mandate in case of an appeal), the said sureties shall stand released from further liability on account of the said stipulation.

Dated: Honolulu, T. H., November 17th, 1921.

(Sgd.) HORACE W. VAUGHAN,

Judge of the United States District Court for the Territory of Hawaii.

Approved as to form and as to signing by Judge Vaughan.

(Sgd.) S. C. HUBER,

Proctor for Libellant.

(Sgd.) SMITH, WARREN & STANLEY,

Proctors for Libellee and Claimant. [37]

Adm. No. 204. In the District Court of the United States for the Territory of Hawaii. In Admiralty—In Rem. The United States of America, Libellant, vs. The Steamship “Nanking,” Her Engines, Boilers, Machinery, Tackle, Apparel and Furniture, Libellee, and China Mail Steamship Company, Limited, Owner and Claimant. Notice of Appeal. Filed Nov. 26, 1921. Wm. L. Rosa, Clerk. By (S.) Ritchie G. Rosa, Deputy. Smith, Warren & Stanley, Attorneys at Law, 205 Bank of Hawaii Bldg., Honolulu, T. H., Proctors for Libellee.

Received a copy of the within Notice of Appeal
this 26th day of November, 1921.

(S.) S. C. HUBER,
United States District Attorney, Proctor for Libel-
lant. [38]

In the District Court of the United States for the
Territory of Hawaii.

IN ADMIRALTY—IN REM.

ADM. No. 204.

THE UNITED STATES OF AMERICA,
Libellant,

vs.

The Steamship “NANKING,” Her Engines,
Boilers, Machinery, Tackle, Apparel and
Furniture,

Libellee,

and

CHINA MAIL STEAMSHIP COMPANY, LIM-
ITED,

Owner and Claimant.

Notice of Appeal.

To the United States of America, Libellant in the
Above-entitled Cause, and to S. C. HUBER,
Esq., United States Attorney, and Proctor for
said Libellant:

You are hereby notified that the steamship “Nan-
king,” her engines, etc., libellee in the above-en-
titled cause, and the China Mail Steamship Com-

pany, Limited, owner and claimant of said vessel, intend to and do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of the United States District Court for the Territory of Hawaii, made and entered in said cause on the 17th day of November, 1921.

Dated, Honolulu, Hawaii, November 26, 1921.

W. O. SMITH,

L. J. WARREN,

W. L. STANLEY,

Proctors for said Libellee and Claimant. [39]

Adm. No. 204. In the District Court of the United States for the Territory of Hawaii. In Admiralty—In Rem. The United States of America, Libellant, vs. The Steamship "Nanking," Her Engines, Boilers, Machinery, Tackle, Apparel and Furniture, Libellee, and China Mail Steamship Company, Limited, Owner and Claimant. Assignment of Errors. Filed January 30, 1922, at 3 o'clock and 55 minutes P. M. Wm. L. Rosa, Clerk. By (S.) Wm. F. Thompson, Jr., Deputy Clerk. Smith, Warren, Stanley & Vitousek, Attorneys at Law, 205 Bank of Hawaii Bldg., Honolulu, T. H., Proctors for Libellee.

Received a copy of the within assignment of errors this 30th day of January, 1922.

(Sgd.) S. C. HUBER,

United States District Attorney, Proctor for Libellant. [40]

In the District Court of the United States for the
Territory of Hawaii.

IN ADMIRALTY—IN REM.

ADM. No. 204.

THE UNITED STATES OF AMERICA,
Libellant,

vs.

The Steamship “NANKING,” Her Engines,
Boilers, Machinery, Tackle, Apparel and
Furniture,

Libellee,

and

CHINA MAIL STEAMSHIP COMPANY, LIM-
ITED,

Owner and Claimant.

Assignment of Errors.

Now comes the Steamship “Nanking,” the libellee in the above-entitled cause, and the China Mail Steamship Company, Limited, owner and claimant thereof, and make and file this their assignment of errors in the above-entitled cause on the appeal of said claimant, as follows:

1. The Court erred in its decision that by virtue of the provisions of Section 10 of the Act of Congress of the United States approved February 5, 1917, entitled “An Act to Regulate the Immigration of Aliens to, and the Residence of Aliens in, the United States,” it was and is the absolute duty of every person, including owners, officers, and

agents of vessels bringing any alien to any seaport of the United States to prevent under all circumstances the landing of such alien in the United States at any time or place other than as designated [41] by the immigration officers, and that the penalties of said section will apply if any such alien has in fact effected an escape from such vessel without the knowledge or consent of the owner, officers, master or agents thereof and notwithstanding such owner, officers, master and agents may have exercised due diligence and taken every reasonable and proper precaution to prevent such unauthorized landing, and notwithstanding such escape may have been effected by means beyond the reasonable power of the said owners, officers, master and agents of the vessel to have anticipated and prevented.

2. The Court erred in its decision that, by virtue of said section 10, it was the absolute duty of the owner, officers and agents of the said steamship "Nanking" to have prevented the aliens named in the libel herein, to wit, Jesus Wong, Manuel Chan, Ramon Chon and Joaquin Lam, and each of them, from landing at the port of Honolulu, when it affirmatively appears by paragraph VII of the answer of the claimant herein that the said aliens in fact effected an escape from said vessel against the will and intent of the owner, officers and agents of said vessel, and that neither the master or any other officer or agent of said vessel nor the owner thereof either knowingly or negligently permitted the landing of said aliens from said vessel, and that every

reasonable and proper precaution was taken and exercised by the master and other officers and the owner of said vessel to prevent any alien passengers from leaving said vessel, and that none did in fact leave or escape from said vessel except over the regular gangway to the dock, which gangway was well guarded by the master and agents of said vessel to prevent any and all aliens from leaving said vessel without exhibiting proper passes issued by [42] the Inspector of Immigration at Honolulu, and that no alien did in fact leave said vessel over said gangway without exhibiting such pass, and notwithstanding the claimant has by its answer to said libel alleged and offered to prove that the said escapes were effected by the fraudulent and improper use of passes theretofore regularly issued by the United States Inspector of Immigration at Honolulu in the manner in said answer set forth.

3. The Court erred in sustaining exception Number 3 taken and filed to claimant's answer and holding that the matters and things alleged in paragraph VII of claimant's answer as above set forth do not state a defense to said libel.

4. The Court erred in its refusal to find and hold that in so far as the said section 10 purports to make punishable as an offense any failure of the owners, officers or agents of any vessel to prevent the landing of an alien in the United States at any time or place other than as designated by the immigration officers, notwithstanding the exercise by them of all due and reasonable care and efforts to prevent such landing, notwithstanding circum-

stances beyond the reasonable power of the owner, officers, master or agents of the vessel to foresee and prevent, and without any negligence or any knowledge thereof, the same is unreasonable, harsh and oppressive, and is illegal and unconstitutional.

5. The Court erred in holding that the answer of the claimant fails to disclose a meritorious defense to said libel.

6. The Court erred in sustaining exception number 4 taken and filed to claimant's answer.

7. The Court erred in having made and entered the decree in said cause on the 17th day of November, 1921, that the said vessel "Nanking," her engines, boilers, machinery, tackle, apparel and furniture, are liable to a penalty in the sum of four [43] thousand dollars, or any penalty, to be paid to the libellant, and that the libellant do have and recover from said libellee, the steamship "Nanking," her engines, etc., the said sum, or any sum.

8. The Court erred in having made and entered the decree in said cause on the 17th day of November, 1921, decreeing that the libellant, United States of America, do have and recover from said libellee, the steamship "Nanking," her engines, boilers, machinery, tackle, apparel and furniture the sum of four thousand dollars, in that said sum so decreed is excessive, and the amount thereof is not warranted by the facts as set forth in the pleadings.

9. The Court erred in rendering and entering the said decree for the enforcement of a penalty against the said vessel, in that the said court, sitting as a court of admiralty, was without jurisdiction to

hear or determine the question of whether or not there had been any violation of the provisions of said section 10, by the owner, master, officer or agent of the said vessel, and was further without the jurisdiction to impose any fine or penalty for any violation thereof.

10. The Court erred in rendering and entering the said decree for the enforcement of a penalty against the said vessel, in that the said court, sitting as a court of admiralty, was without jurisdiction to adjudge the said vessel liable for or subject to any specific fine or penalty under said section 10, or to enforce any lien therefor against said vessel, in the absence of a prior conviction of the person, owner, master, officer or agent of said vessel, upon a trial by jury, of a violation of the provisions of said section 10, and a prior imposition by a court having jurisdiction to try such offense of a specific penalty therefor in the form of a money fine (instead of imprisonment [44] or in addition to imprisonment) against the person so found guilty of such violation of said section 10.

11. The Court erred in rendering and entering the said decree for the enforcement of a penalty against the said vessel, in that the lien intended to be given by said section 10 may be enforced against a vessel only to the extent of such specific penalty, if any, in the form of a money fine, as shall previously have been lawfully imposed by a court having jurisdiction of the offense defined in said section 10 upon a prior conviction by a jury of the owner, master, officer or agent of such vessel of a violation

of the provisions of said section, for the payment of which specific penalty so imposed the said lien is intended as security.

12. The Court erred in its decision that said section 10 of said Act of February 5, 1917, is constitutional.

13. The Court erred in holding said section 10 to be constitutional, for the reason that in so far as the said section 10 purports to authorize the enforcement of any penalty or lien therefor in a proceeding *in rem* against a vessel without there having been a prior conviction, upon a trial by jury, of the owner, master, officer or agent of such vessel of having violated the provisions of said section and without a specific penalty therefor having been previously determined and imposed as a fine upon and against the convicted offender by a court having jurisdiction of said offense, the same operates or will operate to deprive the owner of such vessel of his property without due process of law and is unconstitutional and void.

14. The Court erred in holding said section 10 to be constitutional, because in so far as said section purports to authorize the imposition and enforcement of a penalty against the property of the owner of the vessel involved, without such owner, [45] or the master, officer or agent of said vessel having previously been convicted, upon a trial by jury, of having violated the provisions of such section, the same is unconstitutional and void; and, by the making and entering of said decree, the claimant herein as owner of said vessel has been subjected to a pen-

alty provided by said section for the misdemeanor therein defined without said owner or master, officer or agent of said vessel having been either charged with or convicted of said offense, and said owner has thereby been denied the right of a trial of the alleged offense by jury.

15. The Court erred in rendering and entering said decree, for the reason that said Court, sitting as a court of admiralty, had no power, authority or jurisdiction to hear or determine a claim for the recovery of any penalty alleged to be due or recoverable in a civil action under said section 10.

16. The Court erred in rendering and entering said decree, for the reason that in so far as said section 10 may be construed to authorize the initiation and maintenance of a suit or proceeding in a court of admiralty, *in rem* against the property of the owner of said vessel, without the intervention of a jury, to recover a sum or sums claimed to be recoverable as a penalty for the violation of said section 10, the same is unconstitutional and void as a deprivation of the right of trial by jury given by Article VII of the Constitution of the United States.

17. The Court erred in rendering and entering said decree, for the reason that it was and is beyond the power of the Congress of the United States to deprive the owner of said vessel of the right to a trial by jury given by Article VII of the Constitution of the United States by authorizing or attempting to authorize the recovery of a penalty in a court of admiralty [46] for the alleged violation of said section 10, in that any claim for the recovery of

such penalty is not a subject of admiralty jurisdiction.

18. The Court erred in rendering and entering said decree, for the reason that it is beyond the power of the Congress of the United States to make the penalty provided in said section 10 a maritime lien, for the reason that the liability created by said section 10 for a violation of its provisions is not maritime in its nature.

19. The Court erred in rendering and entering said decree without having required the libellant to prove the allegations set forth in paragraph 6 of each of the several counts of said libel, that in the opinion of the Secretary of Labor it was or is impracticable or inconvenient to prosecute the person, owner, master, officer, or agent of said vessel for the alleged violation of said section 10.

20. The Court erred in rendering and entering said decree without having required the libellant to prove, in each of the four cases set forth in the separate counts of said libel, that it was in fact impracticable and inconvenient to prosecute the person, owner, master, officer or agent of said vessel for the alleged violation of said section 10.

WHEREFORE, and in order that the foregoing assignment of errors may be and appear of record, the said libellee and claimant, appellants herein, file and present the same and pray that they be disposed of as provided by law.

48 *China Mail Steamship Company, Limited,*

Dated, Honolulu, Hawaii, January 30th, 1922.

W. O. SMITH,

L. J. WARREN,

W. L. STANLEY,

R. A. VITOUSEK,

Proctors for said Libellee and Claimant. [47]

Adm. No. 204. In the District Court of the United States for the Territory of Hawaii. In Admiralty—In Rem. The United States of America, Libellant, vs. The Steamship “Nanking,” Her Engines, Boilers, Machinery, Tackle, Apparel and Furniture, Libellee, and China Mail Steamship Company Limited, Owner and Claimant. Praeceptum for Transcript on Appeal. Filed January 30, 1922, at 3 o’clock and 55 minutes P. M. Wm. L. Rosa, Clerk. By (S.) Wm. F. Thompson, Deputy Clerk. Smith, Warren, Stanley & Vitousek, Attorneys at Law, 205 Bank of Hawaii Bldg., Honolulu, T. H., Proctors for Libellee.

Received a copy of the within Praeceptum for Transcript on Appeal this 30th day of January, 1922.

(Sgd.) S. C. HUBER,

United States District Attorney, Proctor for Libellant. [48]

In the District Court of the United States for the
Territory of Hawaii.

IN ADMIRALTY—IN REM.

ADM. No. 204.

THE UNITED STATES OF AMERICA,

Libellant,

vs.

The Steamship “NANKING,” Her Engines,
Boilers, Machinery, Tackle, Apparel and
Furniture,

Libellee,

and

CHINA MAIL STEAMSHIP COMPANY, LIM-
ITED,

Owner and Claimant.

Praeceptum for Transcript of Record on Appeal.

To the Clerk of the United States District Court
for the District and Territory of Hawaii:

You are hereby requested to prepare and certify
a transcript of the record in the above-entitled
cause, to be transmitted to and filed in the office of
the Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit, upon the appeal here-
tofore taken by the libellee and claimant in said
cause and the assignment of errors filed herein; the
said transcript to contain the following:

1. The style of the Court, above appearing.
2. The names of the parties, setting forth the

original parties, to wit: Of the libelant and libellee above named, and the name of the claimant herein, above named, who has become a party before the appeal, by virtue of its appearance as such claimant. [49]

3. The libel (including the order for process).
4. The answer of the claimant.
5. The libelant's exceptions to claimant's answer to the libel.
6. The Court's decision on the exceptions to said answer.
7. The final decree.
8. The notice of appeal by the libellee and claimant.
9. The assignment of errors.
10. This praecipe.
11. The subjoined stipulation relating to this praecipe.
12. Your certificate to said record on appeal.

Dated, Honolulu, T. H., January 30, 1922.

(Sgd.) W. O. SMITH,

(Sgd.) L. J. WARREN,

(Sgd.) W. L. STANLEY,

(Sgd.) R. A. VITOUSEK,

SMITH, WARREN, STANLEY & VITOUSEK.

Stipulation.

It is hereby stipulated and agreed between the parties to the above-entitled cause, by their undersigned proctors, respectively, that the transcript on appeal of the libellee and claimant in said cause may consist of the several matters particularly

enumerated in the foregoing praecipe, and that all other matters may be omitted.

(Sgd.) S. C. HUBER,
Proctor for Libellant.

(Sgd.) SMITH, WARREN, STANLEY &
VITOUSEK,
Proctors for Libellee and Claimant. [50]

In the District Court of the United States for the
Territory of Hawaii.

No. 204.

THE UNITED STATES OF AMERICA,
Libellant,

vs.

The Steamship "NANKING," Her Engines,
Boilers, Machinery, Tackle, Apparel, Furni-
ture,

Libellee,

and

CHINA MAIL STEAMSHIP COMPANY, LIM-
ITED,

Owner and Claimant.

**Certificate of Clerk U. S. District Court to Tran-
script of Record.**

United States of America,
Territory of Hawaii,—ss.

I, Wm. L. Rosa, Clerk of the District Court of
the United States for the District and Territory of
Hawaii, do hereby certify the foregoing pages,

numbered from 1 to —, inclusive to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and I further certify that the cost of the foregoing transcript of record is \$16.35, and that said amount has been paid to me by the appellants.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 5th day of April, A. D. 1922.

[Seal] WM. L. ROSA,
Clerk United States District Court, Territory of
Hawaii. [51]

[Endorsed]: No. 3863. United States Circuit Court of Appeals for the Ninth Circuit. China Mail Steamship Company, Limited, a Corporation, Owner and Claimant of the Steamship "Nanking," Her Engines, Boilers, Machinery, Tackle, Apparel and Furniture, Appellant, vs. The United States of America, Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the Territory of Hawaii.

Filed April 19, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.